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Senate Engrossed

State of Arizona
Senate
Forty-seventh Legislature
First Regular Session
2005

SENATE BILL 1160

AN ACT

AMENDING SECTIONS 5-395.01, 5-395.03, 5-396, 5-397, 28-1381, 28-1382, 28-1383, 28-8284, 28-8286, 28-8287 AND 28-8288, ARIZONA REVISED STATUTES; MAKING AN APPROPRIATION; RELATING TO DEPARTMENT OF PUBLIC SAFETY EQUIPMENT AND BONUSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 5-395.01, Arizona Revised Statutes, is amended to
3 read:

4 5-395.01. Operating or in actual physical control of a
5 motorized watercraft while intoxicated:
6 classification: penalties

7 A. A person who is convicted of a violation of section 5-395 is guilty
8 of a class 1 misdemeanor. The person shall pay a fine of not less than two
9 hundred fifty dollars. In addition to any other penalties under this
10 section, the judge shall order the person to complete alcohol or other drug
11 screening that is provided by a facility approved by the department of health
12 services or a probation department. If a judge determines that the person
13 requires further alcohol or other drug education or treatment, the person may
14 be required pursuant to court order to obtain alcohol or other drug education
15 or treatment under the court's supervision from an approved facility. The
16 judge may review an education or treatment determination at the request of
17 the state or the defendant or on the judge's initiative. The person shall
18 pay the costs of the screening, education or treatment unless the court
19 waives part or all of the costs.

20 B. Except as provided in section 5-398.01, the court may suspend any
21 imposed sentence for a first violation of section 5-395 if the person
22 completes a court ordered alcohol or other drug screening, education or
23 treatment program. If the person fails to complete the court ordered alcohol
24 or other drug screening, education or treatment program and has not been
25 placed on probation, the court shall issue an order to show cause to the
26 defendant as to why the remaining jail sentence should not be served.

27 C. A court may order a person sentenced pursuant to this section to
28 perform community service.

29 D. Notwithstanding subsection B of this section, if within a period of
30 sixty months a person is convicted of a second violation of section 5-395 or
31 is convicted of a violation of section 5-395 and has previously been
32 convicted of an act in another state that if committed in this state would be
33 a violation of section 5-395, the person shall be sentenced to serve not less
34 than ninety days in jail, thirty days of which shall be served consecutively,
35 and the person is not eligible for probation or suspension of execution of
36 sentence unless the entire sentence has been served, except that the judge
37 may suspend at the time of sentencing all but thirty days of the sentence if
38 the person completes a court ordered alcohol or other drug screening,
39 education or treatment program. If the person fails to complete the court
40 ordered alcohol or other drug screening, education or treatment program and
41 has not been placed on probation, the court shall issue an order to show
42 cause as to why the remaining jail sentence should not be served. The judge
43 shall order the person to pay a fine of not less than five hundred dollars.

44 E. The dates of the commission of the offense are the determining
45 factor in applying the sixty month provision of subsection D of this section,
46 irrespective of the sequence in which the offenses were committed. A second

1 violation for which a conviction occurs as provided in this section shall not
2 include a conviction for an offense arising out of the same series of acts.

3 F. If a person is referred to a screening or treatment facility, that
4 facility shall report to the court whether the person has successfully
5 completed the screening, education or treatment program.

6 G. Any political subdivision processing or utilizing the services of a
7 person ordered to perform community service pursuant to this section does not
8 incur any civil liability to the person ordered to perform community service
9 as a result of these activities unless the political subdivision or its agent
10 or employee acts with gross negligence.

11 H. After a person who is sentenced pursuant to subsection B of this
12 section has served twenty-four consecutive hours in jail or after a person
13 who is sentenced pursuant to subsection D of this section has served
14 forty-eight consecutive hours in jail and after receiving confirmation that
15 the person is employed or is a student, the court, on pronouncement of any
16 jail sentence under this section, may provide in the sentence that the person
17 may be permitted, if the person is employed or is a student and can continue
18 the person's employment or studies, to continue such employment or studies
19 for not more than twelve hours per day nor more than five days per week, and
20 the remaining day, days or parts of days shall be spent in jail until the
21 sentence is served. The person shall be allowed out of jail only long enough
22 to complete the actual hours of employment or studies and no longer.

23 I. A person sentenced pursuant to this section is eligible for a home
24 detention program pursuant to the provisions of section 9-499.07, subsections
25 M through R or section 11-459, subsections L through Q.

26 J. The court shall allow the allegation of a prior conviction or other
27 pending charge of a violation of section 5-395 filed twenty or more days
28 before the date the case is actually tried and may allow the allegation of a
29 prior conviction or other pending charge of a violation of section 5-395
30 filed any time before the date the case is actually tried, provided that when
31 the allegation is filed this state must make available to the defendant a
32 copy of any information obtained concerning the prior conviction or other
33 pending charge. Any conviction may be used to enhance another conviction
34 irrespective of the dates on which the offenses occurred within the sixty
35 month provision.

36 K. If a person is placed on probation for violating section 5-395, the
37 probation shall be supervised unless the court finds that supervised
38 probation is not necessary or the court does not have supervisory probation
39 services.

40 L. Persons convicted pursuant to section 5-395 shall pay an additional
41 assessment of five hundred dollars or for a second violation pursuant to
42 subsection D of this section shall pay an additional assessment of one
43 thousand two hundred fifty dollars to be deposited by the state treasurer in
44 the prison construction and operations fund established by section
45 41-1651. These assessments are not subject to any surcharge. If the
46 conviction occurred in the superior court or a justice court, the court shall

1 transmit the assessed monies to the county treasurer. If the conviction
2 occurred in a municipal court, the court shall transmit the assessed monies
3 to the city treasurer. The city or county treasurer shall transmit the
4 monies received to the state treasurer.

5 M. PERSONS CONVICTED PURSUANT TO SECTION 5-395 SHALL PAY AN ADDITIONAL
6 ASSESSMENT OF FIVE HUNDRED DOLLARS OR FOR A SECOND VIOLATION PURSUANT TO
7 SUBSECTION D OF THIS SECTION SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE
8 THOUSAND TWO HUNDRED FIFTY DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN
9 THE STATE GENERAL FUND. THESE ASSESSMENTS ARE NOT SUBJECT TO ANY SURCHARGE.
10 IF THE CONVICTION OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE
11 COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE
12 CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE
13 ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY TREASURER SHALL
14 TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER.

15 Sec. 2. Section 5-395.03, Arizona Revised Statutes, is amended to
16 read:

17 5-395.03. Test for alcohol concentration or drug content;
18 refusal; civil penalties

19 A. Any person who operates a motorized watercraft that is underway
20 within this state shall submit, subject to section 4-244, paragraph 34,
21 section 5-395 or section 5-396, to a test or tests of the person's blood,
22 breath, urine or other bodily substance for the purpose of determining
23 alcohol concentration or drug content if the person is arrested for any
24 offense arising out of acts alleged to have been committed in violation of
25 this chapter or section 4-244, paragraph 34 while the person was operating or
26 in actual physical control of a motorized watercraft that was underway while
27 under the influence of intoxicating liquor or drugs. The test or tests
28 chosen by the law enforcement agency shall be administered at the direction
29 of a law enforcement officer having reasonable grounds to believe the person
30 to have been operating or in actual physical control of a motorized
31 watercraft that is underway within this state while under the influence of
32 intoxicating liquor or drugs, or if the person is under twenty-one years of
33 age, with spirituous liquor in the person's body.

34 B. Following an arrest a violator shall be requested to submit to and
35 successfully complete any test or tests prescribed by subsection A of this
36 section, and if the violator refuses the violator shall be informed that the
37 violator is subject to a civil penalty.

38 C. A person who refuses any test or tests prescribed by subsection A
39 of this section is subject to a civil penalty of seven hundred fifty dollars.
40 ~~and~~ THE PERSON shall pay an additional civil penalty of five hundred dollars
41 to be deposited by the state treasurer in the prison construction and
42 operations fund established by section 41-1651. The additional civil penalty
43 of five hundred dollars is not subject to any surcharge. If the additional
44 civil penalty is imposed by the superior court or a justice court, the court
45 shall transmit the amount collected for the additional civil penalty to the
46 county treasurer. If the additional civil penalty is imposed by a municipal

1 court, the court shall transmit the amount collected for the additional civil
2 penalty to the city treasurer. The city or county treasurer shall transmit
3 the monies received pursuant to this subsection to the state treasurer.

4 D. A PERSON WHO REFUSES ANY TEST OR TESTS PRESCRIBED BY SUBSECTION A
5 OF THIS SECTION SHALL PAY AN ADDITIONAL CIVIL PENALTY OF FIVE HUNDRED DOLLARS
6 TO BE DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL FUND. THE
7 ADDITIONAL CIVIL PENALTY OF FIVE HUNDRED DOLLARS IS NOT SUBJECT TO ANY
8 SURCHARGE. IF THE ADDITIONAL CIVIL PENALTY IS IMPOSED BY THE SUPERIOR COURT
9 OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE AMOUNT COLLECTED FOR THE
10 ADDITIONAL CIVIL PENALTY TO THE COUNTY TREASURER. IF THE ADDITIONAL CIVIL
11 PENALTY IS IMPOSED BY A MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE AMOUNT
12 COLLECTED FOR THE ADDITIONAL CIVIL PENALTY TO THE CITY TREASURER. THE CITY
13 OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED PURSUANT TO THIS
14 SUBSECTION TO THE STATE TREASURER.

15 ~~D.~~ E. If a person under arrest refuses to submit to the test
16 designated by the law enforcement agency as provided in subsection A of this
17 section none shall be given, except as provided in section 5-395, subsection
18 J or pursuant to a search warrant.

19 Sec. 3. Section 5-396, Arizona Revised Statutes, is amended to read:

20 5-396. Aggravated operating or actual physical control of
21 motorized watercraft while under the influence of
22 intoxicating liquor or drugs; classification

23 A. A person is guilty of aggravated operating or actual physical
24 control of a motorized watercraft that is underway while under the influence
25 of intoxicating liquor or drugs if the person commits a third or subsequent
26 violation of section 5-395 or 5-397 or this section or is convicted of a
27 violation of section 5-395 or 5-397 or this section and has previously been
28 convicted of any combination of convictions of section 5-395 or 5-397 or this
29 section or acts committed in another state that if committed in this state
30 would be a violation of section 5-395 or 5-397 or this section within a
31 period of sixty months.

32 B. The dates of the commission of the offenses are the determining
33 factor in applying the sixty month provision provided in subsection A of this
34 section regardless of the sequence in which the offenses were committed. For
35 purposes of this section, a third or subsequent violation for which a
36 conviction occurs does not include a conviction for an offense arising out of
37 the same series of acts.

38 C. Aggravated operating or actual physical control of a motorized
39 watercraft that is underway while under the influence of intoxicating liquor
40 or drugs is a class 4 felony.

41 D. Notwithstanding section 41-1604.06, a person who is convicted under
42 subsection A of this section and who within a sixty month period has been
43 convicted of two prior violations of section 5-395 or 5-397 or this section,
44 or acts committed in another state that if committed in this state would be a
45 violation of section 5-395 or 5-397 or this section, is not eligible for

1 probation, pardon, commutation or suspension of sentence or release on any
2 other basis until the person has served not less than four months in prison.

3 E. Notwithstanding section 41-1604.06, a person who is convicted under
4 subsection A of this section and who within a sixty month period has been
5 convicted of three or more prior violations of section 5-395 or 5-397 or this
6 section, or acts committed in another state that if committed in this state
7 would be a violation of section 5-395 or 5-397 or this section, is not
8 eligible for probation, pardon, commutation or suspension of sentence or
9 release on any other basis until the person has served not less than eight
10 months in prison.

11 F. A person who is convicted of a violation of this section and who is
12 placed on probation shall attend and complete alcohol or drug screening,
13 counseling and education from an approved facility, ~~and~~, if ordered by the
14 court, treatment from an approved facility. If the person fails to comply
15 with ~~the provisions of~~ this subsection, in addition to ~~the provisions of~~
16 section 13-901 the court may order that the person be incarcerated as a term
17 of probation as follows:

18 1. For a person sentenced pursuant to subsection D of this section,
19 for an individual period of not more than four months and a total period of
20 not more than one year.

21 2. For a person sentenced pursuant to subsection E of this section,
22 for an individual period of not more than eight months and a total period of
23 not more than two years.

24 G. The time that a person spends in custody pursuant to subsection D,
25 E or F of this section shall not be counted toward the sentence imposed if
26 the person's probation is revoked and the person is sentenced to prison
27 following revocation of probation.

28 H. A person convicted of a violation of this section shall pay a fine
29 of not less than seven hundred fifty dollars.

30 I. In addition to any other penalty prescribed by law, persons
31 convicted pursuant to this section shall pay an additional assessment of one
32 thousand five hundred dollars to be deposited by the state treasurer in the
33 prison construction and operations fund established by section 41-1651. This
34 assessment is not subject to any surcharge. If the conviction occurred in
35 the superior court or a justice court, the court shall transmit the assessed
36 monies to the county treasurer. If the conviction occurred in a municipal
37 court, the court shall transmit the assessed monies to the city treasurer.
38 The city or county treasurer shall transmit the monies received to the state
39 treasurer.

40 J. IN ADDITION TO ANY OTHER PENALTY PRESCRIBED BY LAW, PERSONS
41 CONVICTED PURSUANT TO THIS SECTION SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE
42 THOUSAND FIVE HUNDRED DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE
43 STATE GENERAL FUND. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE
44 CONVICTION OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL
45 TRANSMIT THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE CONVICTION
46 OCCURRED IN A MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES

1 TO THE CITY TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE
2 MONIES RECEIVED TO THE STATE TREASURER.

3 Sec. 4. Section 5-397, Arizona Revised Statutes, is amended to read:

4 5-397. Operating or in actual physical control of a motorized
5 watercraft while under the extreme influence of
6 intoxicating liquor; trial by jury; sentencing;
7 classification; definition

8 A. It is unlawful for a person to operate or be in actual physical
9 control of a motorized watercraft that is underway within this state if the
10 person has an alcohol concentration of 0.15 or more within two hours of
11 operating or being in actual physical control of the motorized watercraft and
12 the alcohol concentration results from alcohol consumed either before or
13 while operating or being in actual physical control of the motorized
14 watercraft.

15 B. A person who is convicted of a violation of this section is guilty
16 of operating or being in actual physical control of a motorized watercraft
17 while under the extreme influence of alcohol.

18 C. At the arraignment, the court shall inform the defendant that the
19 defendant may request a trial by jury and that the request, if made, shall be
20 granted.

21 D. A person who is convicted of a violation of this section:

22 1. Shall be sentenced to serve not less than thirty consecutive days
23 in jail and is not eligible for probation or suspension of execution of
24 sentence unless the entire sentence is served.

25 2. Shall pay a fine of not less than two hundred fifty dollars.

26 3. May be ordered by a court to perform community service.

27 4. Shall pay an additional assessment of one thousand dollars to be
28 deposited by the state treasurer in the prison construction and operations
29 fund established by section 41-1651. This assessment is not subject to any
30 surcharge. If the conviction occurred in the superior court or a justice
31 court, the court shall transmit the assessed monies to the county
32 treasurer. If the conviction occurred in a municipal court, the court shall
33 transmit the assessed monies to the city treasurer. The city or county
34 treasurer shall transmit the monies received to the state treasurer.

35 5. SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND DOLLARS TO BE
36 DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL FUND. THIS ASSESSMENT
37 IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN THE SUPERIOR
38 COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE
39 COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT
40 SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY
41 TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER.

42 E. Notwithstanding subsection D, paragraph 1 of this section, at the
43 time of sentencing the judge may suspend all but ten days of the sentence if
44 the person completes a court ordered alcohol or other drug screening,
45 education or treatment program. If the person fails to complete the court
46 ordered alcohol or other drug screening, education or treatment program and

1 has not been placed on probation, the court shall issue an order to show
2 cause to the defendant as to why the remaining jail sentence should not be
3 served.

4 F. If within a period of sixty months a person is convicted of a
5 second violation of this section or is convicted of a violation of this
6 section and has previously been convicted of a violation of section 5-395 or
7 5-396 or an act in another jurisdiction that if committed in this state would
8 be a violation of this section or section 5-395 or 5-396, the person:

9 1. Shall be sentenced to serve not less than one hundred twenty days
10 in jail, sixty days of which shall be served consecutively, and is not
11 eligible for probation or suspension of execution of sentence unless the
12 entire sentence has been served.

13 2. Shall pay a fine of not less than five hundred dollars.

14 3. May be ordered by a court to perform community service.

15 4. Shall pay an additional assessment of one thousand two hundred
16 fifty dollars to be deposited by the state treasurer in the prison
17 construction and operations fund established by section 41-1651. This
18 assessment is not subject to any surcharge. If the conviction occurred in
19 the superior court or a justice court, the court shall transmit the assessed
20 monies to the county treasurer. If the conviction occurred in a municipal
21 court, the court shall transmit the assessed monies to the city treasurer.
22 The city or county treasurer shall transmit the monies received to the state
23 treasurer.

24 5. SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND TWO HUNDRED
25 FIFTY DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL
26 FUND. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION
27 OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT
28 THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A
29 MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY
30 TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO
31 THE STATE TREASURER.

32 G. Notwithstanding subsection F, paragraph 1 of this section, at the
33 time of sentencing, the judge may suspend all but sixty days of the sentence
34 if the person completes a court ordered alcohol or other drug screening,
35 education or treatment program. If the person fails to complete the court
36 ordered alcohol or other drug screening, education or treatment program and
37 has not been placed on probation, the court shall issue an order to show
38 cause as to why the remaining jail sentence should not be served.

39 H. In applying the sixty month provision of subsection F of this
40 section, the dates of the commission of the offense shall be the determining
41 factor, irrespective of the sequence in which the offenses were committed.

42 I. A second violation for which a conviction occurs as provided in
43 this section shall not include a conviction for an offense arising out of the
44 same series of acts.

45 J. A person who is convicted of a violation of this section is guilty
46 of a class 1 misdemeanor.

1 K. For the purposes of this section, "alcohol concentration" means
2 grams of alcohol per one hundred milliliters of blood or grams of alcohol per
3 two hundred ten liters of breath.

4 Sec. 5. Section 28-1381, Arizona Revised Statutes, is amended to read:

5 28-1381. Driving or actual physical control while under the
6 influence; trial by jury; presumptions; admissible
7 evidence; sentencing; classification

8 A. It is unlawful for a person to drive or be in actual physical
9 control of a vehicle in this state under any of the following circumstances:

10 1. While under the influence of intoxicating liquor, any drug, a vapor
11 releasing substance containing a toxic substance or any combination of
12 liquor, drugs or vapor releasing substances if the person is impaired to the
13 slightest degree.

14 2. If the person has an alcohol concentration of 0.08 or more within
15 two hours of driving or being in actual physical control of the vehicle and
16 the alcohol concentration results from alcohol consumed either before or
17 while driving or being in actual physical control of the vehicle.

18 3. While there is any drug defined in section 13-3401 or its
19 metabolite in the person's body.

20 4. If the vehicle is a commercial motor vehicle that requires a person
21 to obtain a commercial driver license as defined in section 28-3001 and the
22 person has an alcohol concentration of 0.04 or more.

23 B. It is not a defense to a charge of a violation of subsection A,
24 paragraph 1 of this section that the person is or has been entitled to use
25 the drug under the laws of this state.

26 C. A person who is convicted of a violation of this section is guilty
27 of a class 1 misdemeanor.

28 D. A person using a drug prescribed by a medical practitioner licensed
29 pursuant to title 32, chapter 7, 11, 13 or 17 is not guilty of violating
30 subsection A, paragraph 3 of this section.

31 E. In any prosecution for a violation of this section, the state shall
32 allege, for the purpose of classification and sentencing pursuant to this
33 section, all prior convictions of violating this section, section 28-1382 or
34 section 28-1383 occurring within the past thirty-six months, unless there is
35 an insufficient legal or factual basis to do so.

36 F. At the arraignment, the court shall inform the defendant that the
37 defendant may request a trial by jury and that the request, if made, shall be
38 granted.

39 G. In a trial, action or proceeding for a violation of this section or
40 section 28-1383 other than a trial, action or proceeding involving driving or
41 being in actual physical control of a commercial vehicle, the defendant's
42 alcohol concentration within two hours of the time of driving or being in
43 actual physical control as shown by analysis of the defendant's blood, breath
44 or other bodily substance gives rise to the following presumptions:

1 1. If there was at that time 0.05 or less alcohol concentration in the
2 defendant's blood, breath or other bodily substance, it may be presumed that
3 the defendant was not under the influence of intoxicating liquor.

4 2. If there was at that time in excess of 0.05 but less than 0.08
5 alcohol concentration in the defendant's blood, breath or other bodily
6 substance, that fact shall not give rise to a presumption that the defendant
7 was or was not under the influence of intoxicating liquor, but that fact may
8 be considered with other competent evidence in determining the guilt or
9 innocence of the defendant.

10 3. If there was at that time 0.08 or more alcohol concentration in the
11 defendant's blood, breath or other bodily substance, it may be presumed that
12 the defendant was under the influence of intoxicating liquor.

13 H. Subsection G of this section does not limit the introduction of any
14 other competent evidence bearing on the question of whether or not the
15 defendant was under the influence of intoxicating liquor.

16 I. A person who is convicted of a violation of this section:

17 1. Shall be sentenced to serve not less than ten consecutive days in
18 jail and is not eligible for probation or suspension of execution of sentence
19 unless the entire sentence is served.

20 2. Shall pay a fine of not less than two hundred fifty dollars.

21 3. May be ordered by a court to perform community service.

22 4. Shall pay an additional assessment of five hundred dollars to be
23 deposited by the state treasurer in the prison construction and operations
24 fund established by section 41-1651. This assessment is not subject to any
25 surcharge. If the conviction occurred in the superior court or a justice
26 court, the court shall transmit the assessed monies to the county
27 treasurer. If the conviction occurred in a municipal court, the court shall
28 transmit the assessed monies to the city treasurer. The city or county
29 treasurer shall transmit the monies received to the state treasurer.

30 5. SHALL PAY AN ADDITIONAL ASSESSMENT OF FIVE HUNDRED DOLLARS TO BE
31 DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL FUND. THIS ASSESSMENT
32 IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN THE SUPERIOR
33 COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE
34 COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT
35 SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY
36 TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER.

37 J. Notwithstanding subsection I, paragraph 1 of this section, at the
38 time of sentencing the judge may suspend all but twenty-four consecutive
39 hours of the sentence if the person completes a court ordered alcohol or
40 other drug screening, education or treatment program. If the person fails to
41 complete the court ordered alcohol or other drug screening, education or
42 treatment program and has not been placed on probation, the court shall issue
43 an order to show cause to the defendant as to why the remaining jail sentence
44 should not be served.

45 K. If within a period of sixty months a person is convicted of a
46 second violation of this section or is convicted of a violation of this

1 section and has previously been convicted of a violation of section 28-1382
2 or 28-1383 or an act in another jurisdiction that if committed in this state
3 would be a violation of this section or section 28-1382 or 28-1383, the
4 person:

5 1. Shall be sentenced to serve not less than ninety days in jail,
6 thirty days of which shall be served consecutively, and is not eligible for
7 probation or suspension of execution of sentence unless the entire sentence
8 has been served.

9 2. Shall pay a fine of not less than five hundred dollars.

10 3. May be ordered by a court to perform community service.

11 4. Shall have the person's driving privilege revoked for one year. The
12 court shall report the conviction to the department. On receipt of the
13 report, the department shall revoke the person's driving privilege and shall
14 require the person to equip any motor vehicle the person operates with a
15 certified ignition interlock device pursuant to section 28-3319. In
16 addition, the court may order the person to equip any motor vehicle the
17 person operates with a certified ignition interlock device for more than
18 twelve months beginning on the date of reinstatement of the person's driving
19 privilege following a suspension or revocation or on the date of the
20 department's receipt of the report of conviction, whichever occurs
21 later. The person who operates a motor vehicle with a certified ignition
22 interlock device under this paragraph shall comply with article 5 of this
23 chapter.

24 5. Shall pay an additional assessment of one thousand two hundred
25 fifty dollars to be deposited by the state treasurer in the prison
26 construction and operations fund established by section 41-1651. This
27 assessment is not subject to any surcharge. If the conviction occurred in
28 the superior court or a justice court, the court shall transmit the assessed
29 monies to the county treasurer. If the conviction occurred in a municipal
30 court, the court shall transmit the assessed monies to the city
31 treasurer. The city or county treasurer shall transmit the monies received
32 to the state treasurer.

33 6. SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND TWO HUNDRED
34 FIFTY DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL
35 FUND. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION
36 OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT
37 THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A
38 MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY
39 TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED
40 TO THE STATE TREASURER.

41 L. Notwithstanding subsection K, paragraph 1 of this section, at the
42 time of sentencing, the judge may suspend all but thirty days of the sentence
43 if the person completes a court ordered alcohol or other drug screening,
44 education or treatment program. If the person fails to complete the court
45 ordered alcohol or other drug screening, education or treatment program and

1 has not been placed on probation, the court shall issue an order to show
2 cause as to why the remaining jail sentence should not be served.

3 M. In applying the sixty month provision of subsection K of this
4 section, the dates of the commission of the offense shall be the determining
5 factor, irrespective of the sequence in which the offenses were committed.

6 N. A second violation for which a conviction occurs as provided in
7 this section shall not include a conviction for an offense arising out of the
8 same series of acts.

9 Sec. 6. Section 28-1382, Arizona Revised Statutes, is amended to read:

10 28-1382. Driving or actual physical control while under the
11 extreme influence of intoxicating liquor; trial by
12 jury; sentencing; classification

13 A. It is unlawful for a person to drive or be in actual physical
14 control of a vehicle in this state if the person has an alcohol concentration
15 of 0.15 or more within two hours of driving or being in actual physical
16 control of the vehicle and the alcohol concentration results from alcohol
17 consumed either before or while driving or being in actual physical control
18 of the vehicle.

19 B. A person who is convicted of a violation of this section is guilty
20 of driving or being in actual physical control of a vehicle while under the
21 extreme influence of intoxicating liquor.

22 C. At the arraignment, the court shall inform the defendant that the
23 defendant may request a trial by jury and that the request, if made, shall be
24 granted.

25 D. A person who is convicted of a violation of this section:

26 1. Shall be sentenced to serve not less than thirty consecutive days
27 in jail and is not eligible for probation or suspension of execution of
28 sentence unless the entire sentence is served.

29 2. Shall pay a fine of not less than two hundred fifty dollars. The
30 fine prescribed in this paragraph and any assessments, restitution and
31 incarceration costs shall be paid before the assessment prescribed in
32 paragraph 3 of this subsection.

33 3. Shall pay an additional assessment of two hundred fifty dollars. If
34 the conviction occurred in the superior court or a justice court, the court
35 shall transmit the monies received pursuant to this paragraph to the county
36 treasurer. If the conviction occurred in a municipal court, the court shall
37 transmit the monies received pursuant to this paragraph to the city
38 treasurer. The city or county treasurer shall transmit the monies received to
39 the state treasurer. The state treasurer shall deposit the monies received
40 in the driving under the influence abatement fund established by section
41 28-1304.

42 4. May be ordered by a court to perform community service.

43 5. Shall be required by the department, on receipt of the report of
44 conviction, to equip any motor vehicle the person operates with a certified
45 ignition interlock device pursuant to section 28-3319. In addition, the
46 court may order the person to equip any motor vehicle the person operates

1 with a certified ignition interlock device for more than twelve months
2 beginning on the date of reinstatement of the person's driving privilege
3 following a suspension or revocation or on the date of the department's
4 receipt of the report of conviction, whichever occurs later. The person who
5 operates a motor vehicle with a certified ignition interlock device under
6 this paragraph shall comply with article 5 of this chapter.

7 6. Shall pay an additional assessment of one thousand dollars to be
8 deposited by the state treasurer in the prison construction and operations
9 fund established by section 41-1651. This assessment is not subject to any
10 surcharge. If the conviction occurred in the superior court or a justice
11 court, the court shall transmit the assessed monies to the county
12 treasurer. If the conviction occurred in a municipal court, the court shall
13 transmit the assessed monies to the city treasurer. The city or county
14 treasurer shall transmit the monies received to the state treasurer.

15 7. SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND DOLLARS TO BE
16 DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL FUND. THIS ASSESSMENT
17 IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN THE SUPERIOR
18 COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE
19 COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT
20 SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY
21 TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER.

22 E. Notwithstanding subsection D, paragraph 1 of this section, at the
23 time of sentencing the judge may suspend all but ten days of the sentence if
24 the person completes a court ordered alcohol or other drug screening,
25 education or treatment program. If the person fails to complete the court
26 ordered alcohol or other drug screening, education or treatment program and
27 has not been placed on probation, the court shall issue an order to show
28 cause to the defendant as to why the remaining jail sentence should not be
29 served.

30 F. If within a period of sixty months a person is convicted of a
31 second violation of this section or is convicted of a violation of this
32 section and has previously been convicted of a violation of section 28-1381
33 or 28-1383 or an act in another jurisdiction that if committed in this state
34 would be a violation of this section or section 28-1381 or 28-1383, the
35 person:

36 1. Shall be sentenced to serve not less than one hundred twenty days
37 in jail, sixty days of which shall be served consecutively, and is not
38 eligible for probation or suspension of execution of sentence unless the
39 entire sentence has been served.

40 2. Shall pay a fine of not less than five hundred dollars. The fine
41 prescribed in this paragraph and any assessments, restitution and
42 incarceration costs shall be paid before the assessment prescribed in
43 paragraph 3 of this subsection.

44 3. Shall pay an additional assessment of two hundred fifty
45 dollars. If the conviction occurred in the superior court or a justice
46 court, the court shall transmit the monies received pursuant to this

1 paragraph to the county treasurer. If the conviction occurred in a municipal
2 court, the court shall transmit the monies received pursuant to this
3 paragraph to the city treasurer. The city or county treasurer shall transmit
4 the monies received to the state treasurer. The state treasurer shall
5 deposit the monies received in the driving under the influence abatement fund
6 established by section 28-1304.

7 4. May be ordered by a court to perform community service.

8 5. Shall have the person's driving privilege revoked for at least one
9 year. The court shall report the conviction to the department. On receipt
10 of the report, the department shall revoke the person's driving privilege and
11 shall require the person to equip any motor vehicle the person operates with
12 a certified ignition interlock device pursuant to section 28-3319. In
13 addition, the court may order the person to equip any motor vehicle the
14 person operates with a certified ignition interlock device for more than
15 twelve months beginning on the date of reinstatement of the person's driving
16 privilege following a suspension or revocation or on the date of the
17 department's receipt of the report of conviction, whichever is later. The
18 person who operates a motor vehicle with a certified ignition interlock
19 device under this paragraph shall comply with article 5 of this chapter.

20 6. Shall pay an additional assessment of one thousand two hundred
21 fifty dollars to be deposited by the state treasurer in the prison
22 construction and operations fund established by section 41-1651. This
23 assessment is not subject to any surcharge. If the conviction occurred in
24 the superior court or a justice court, the court shall transmit the assessed
25 monies to the county treasurer. If the conviction occurred in a municipal
26 court, the court shall transmit the assessed monies to the city treasurer.
27 The city or county treasurer shall transmit the monies received to the state
28 treasurer.

29 7. SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND TWO HUNDRED
30 FIFTY DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL
31 FUND. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION
32 OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT
33 THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A
34 MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY
35 TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO
36 THE STATE TREASURER.

37 G. Notwithstanding subsection F, paragraph 1 of this section, at the
38 time of sentencing, the judge may suspend all but sixty days of the sentence
39 if the person completes a court ordered alcohol or other drug screening,
40 education or treatment program. If the person fails to complete the court
41 ordered alcohol or other drug screening, education or treatment program and
42 has not been placed on probation, the court shall issue an order to show
43 cause as to why the remaining jail sentence should not be served.

44 H. In applying the sixty month provision of subsection F of this
45 section, the dates of the commission of the offense shall be the determining
46 factor, irrespective of the sequence in which the offenses were committed.

1 I. A second violation for which a conviction occurs as provided in
2 this section shall not include a conviction for an offense arising out of the
3 same series of acts.

4 J. A person who is convicted of a violation of this section is guilty
5 of a class 1 misdemeanor.

6 Sec. 7. Section 28-1383, Arizona Revised Statutes, is amended to read:

7 28-1383. Aggravated driving or actual physical control while
8 under the influence; violation; classification;
9 definition

10 A. A person is guilty of aggravated driving or actual physical control
11 while under the influence of intoxicating liquor or drugs if the person does
12 any of the following:

13 1. Commits a violation of section 28-1381, section 28-1382 or this
14 section while the person's driver license or privilege to drive is suspended,
15 canceled, revoked or refused or while a restriction is placed on the person's
16 driver license or privilege to drive as a result of violating section 28-1381
17 or 28-1382 or under section 28-1385.

18 2. Within a period of sixty months commits a third or subsequent
19 violation of section 28-1381, section 28-1382 or this section or is convicted
20 of a violation of section 28-1381, section 28-1382 or this section and has
21 previously been convicted of any combination of convictions of section
22 28-1381, section 28-1382 or this section or acts in another jurisdiction that
23 if committed in this state would be a violation of section 28-1381, section
24 28-1382 or this section.

25 3. While a person under fifteen years of age is in the vehicle,
26 commits a violation of either:

27 (a) Section 28-1381.

28 (b) Section 28-1382.

29 B. The dates of the commission of the offenses are the determining
30 factor in applying the sixty month provision provided in subsection A,
31 paragraph 2 of this section regardless of the sequence in which the offenses
32 were committed. For the purposes of this section, a third or subsequent
33 violation for which a conviction occurs does not include a conviction for an
34 offense arising out of the same series of acts.

35 C. The notice to a person of the suspension, cancellation, revocation
36 or refusal of a driver license or privilege to drive is effective as provided
37 in section 28-3318 or pursuant to the laws of the state issuing the license.

38 D. A person is not eligible for probation, pardon, commutation or
39 suspension of sentence or release on any other basis until the person has
40 served not less than four months in prison if the person is convicted under
41 either of the following:

42 1. Subsection A, paragraph 1 of this section.

43 2. Subsection A, paragraph 2 of this section and within a sixty month
44 period has been convicted of two prior violations of section 28-1381, section
45 28-1382 or this section, or any combination of those sections, or acts in

1 another jurisdiction that if committed in this state would be a violation of
2 section 28-1381, section 28-1382 or this section.

3 E. A person who is convicted under subsection A, paragraph 2 of this
4 section and who within a sixty month period has been convicted of three or
5 more prior violations of section 28-1381, section 28-1382 or this section, or
6 any combination of those sections, or acts in another jurisdiction that if
7 committed in this state would be a violation of section 28-1381, section
8 28-1382 or this section is not eligible for probation, pardon, commutation or
9 suspension of sentence or release on any other basis until the person has
10 served not less than eight months in prison.

11 F. In addition to any other penalty provided by law, a person who is
12 convicted under subsection A, paragraph 3, subdivision (a) of this section
13 shall be sentenced to at least the minimum sentence required pursuant to
14 section 28-1381, except that if a person has been convicted of at least two
15 prior violations of section 28-1381, section 28-1382 or this section, or any
16 combination of those sections, or convicted of at least two prior acts in
17 another jurisdiction that if committed in this state would be violations of
18 section 28-1381, section 28-1382 or this section, or any combination of those
19 sections, within a sixty month period, the person shall be sentenced to serve
20 at least the minimum sentence required pursuant to this section.

21 G. In addition to any other penalty provided by law, a person who is
22 convicted under subsection A, paragraph 3, subdivision (b) of this section
23 shall be sentenced to at least the minimum sentence required pursuant to
24 section 28-1382, except that if a person has been convicted of at least two
25 prior violations of section 28-1381, section 28-1382 or this section, or any
26 combination of those sections, or convicted of at least two prior acts in
27 another jurisdiction that if committed in this state would be a violation of
28 section 28-1381, section 28-1382 or this section, or any combination of those
29 sections, within a sixty month period, the person shall be sentenced to serve
30 at least the minimum sentence required pursuant to this section.

31 H. A person who is convicted of a violation of this section shall
32 attend and complete alcohol or other drug screening, education or treatment
33 from an approved facility. If the person fails to comply with this
34 subsection and is placed on probation, in addition to the provisions of
35 section 13-901 the court may order that the person be incarcerated as a term
36 of probation as follows:

37 1. For a person sentenced pursuant to subsection D of this section,
38 for an individual period of not more than four months and a total period of
39 not more than one year.

40 2. For a person sentenced pursuant to subsection E of this section,
41 for an individual period of not more than eight months and a total period of
42 not more than two years.

43 I. The time that a person spends in custody pursuant to subsection H
44 of this section shall not be counted towards the sentence imposed if the
45 person's probation is revoked and the person is sentenced to prison after
46 revocation of probation.

1 J. The court:

2 1. Shall report the conviction to the department. On receipt of the
3 report, the department shall revoke the driving privilege of the person. The
4 department shall not issue the person a new driver license within three years
5 of the date of the conviction and, for a conviction of a violation of
6 subsection A, paragraph 1 or 2 or paragraph 3, subdivision (b) of this
7 section, shall require the person to equip any motor vehicle the person
8 operates with a certified ignition interlock device pursuant to section
9 28-3319. In addition, the court may order the person to equip any motor
10 vehicle the person operates with a certified ignition interlock device for
11 more than twelve months beginning on the date of reinstatement of the
12 person's driving privilege following a suspension or revocation or on the
13 date of the department's receipt of the report of conviction, whichever
14 occurs later. The person who operates a motor vehicle with a certified
15 ignition interlock device under this paragraph shall comply with article 5 of
16 this chapter.

17 2. In addition to any other penalty prescribed by law, shall order the
18 person to pay an additional assessment of two hundred fifty dollars. If the
19 conviction occurred in the superior court or a justice court, the court shall
20 transmit the monies received pursuant to this paragraph to the county
21 treasurer. If the conviction occurred in a municipal court, the court shall
22 transmit the monies received pursuant to this paragraph to the city
23 treasurer. The city or county treasurer shall transmit the monies received
24 to the state treasurer. The state treasurer shall deposit the monies
25 received in the driving under the influence abatement fund established by
26 section 28-1304. Any fine imposed for a violation of this section and any
27 assessments, restitution and incarceration costs shall be paid before the
28 assessment prescribed in this paragraph.

29 3. Shall order the person to pay a fine of not less than seven hundred
30 fifty dollars.

31 4. In addition to any other penalty prescribed by law, shall order the
32 person to pay an additional assessment of one thousand five hundred dollars
33 to be deposited by the state treasurer in the prison construction and
34 operations fund established by section 41-1651. This assessment is not
35 subject to any surcharge. If the conviction occurred in the superior court
36 or a justice court, the court shall transmit the assessed monies to the
37 county treasurer. If the conviction occurred in a municipal court, the court
38 shall transmit the assessed monies to the city treasurer. The city or county
39 treasurer shall transmit the monies received to the state treasurer.

40 5. IN ADDITION TO ANY OTHER PENALTY PRESCRIBED BY LAW, SHALL ORDER THE
41 PERSON TO PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND FIVE HUNDRED DOLLARS
42 TO BE DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL FUND. THIS
43 ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN
44 THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED
45 MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL
46 COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER.

1 THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE
2 TREASURER.

3 K. Aggravated driving or actual physical control while under the
4 influence of intoxicating liquor or drugs committed under:

5 1. Subsection A, paragraph 1 or 2 of this section is a class 4 felony.

6 2. Subsection A, paragraph 3 of this section is a class 6 felony.

7 L. For the purposes of this section, "suspension, cancellation,
8 revocation or refusal" means any suspension, cancellation, revocation or
9 refusal.

10 Sec. 8. Section 28-8284, Arizona Revised Statutes, is amended to read:

11 28-8284. Violation; classification

12 A. A person who is convicted of a violation of section 28-8282 is
13 guilty of a class 1 misdemeanor and shall be sentenced to serve not less than
14 twenty-four consecutive hours in jail.

15 B. The court shall order the person to pay a fine of not less than two
16 hundred fifty dollars and may order the person to perform not less than eight
17 or more than twenty-four hours of community service.

18 C. A court shall not grant probation to or suspend any part or all of
19 the imposition or execution of a sentence required by this section, except on
20 the condition that the person serve not less than twenty-four consecutive
21 hours in jail and pay a fine of not less than two hundred fifty dollars.

22 D. The court:

23 1. Shall not excuse an offender from spending twenty-four consecutive
24 hours in jail.

25 2. May require the offender to attend traffic safety or alcohol abuse
26 classes at the offender's expense.

27 3. If in the court's opinion the offender has the problem of habitual
28 abuse of alcohol or drugs, shall require the offender to obtain treatment
29 under its supervision.

30 4. Shall order the offender to pay an additional assessment of five
31 hundred dollars to be deposited by the state treasurer in the prison
32 construction and operations fund established by section 41-1651. This
33 assessment is not subject to any surcharge. If the conviction occurred in
34 the superior court or a justice court, the court shall transmit the assessed
35 monies to the county treasurer. If the conviction occurred in a municipal
36 court, the court shall transmit the assessed monies to the city treasurer.
37 The city or county treasurer shall transmit the monies received to the state
38 treasurer.

39 5. SHALL ORDER THE OFFENDER TO PAY AN ADDITIONAL ASSESSMENT OF FIVE
40 HUNDRED DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL
41 FUND. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION
42 OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT
43 THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A
44 MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY
45 TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO
46 THE STATE TREASURER.

1 E. Notwithstanding subsection A of this section, the judge may
2 sentence a person pursuant to section 28-8286 instead of pursuant to
3 subsection A of this section, if all of the following conditions are met:

- 4 1. The person is convicted of a violation of section 28-8282.
- 5 2. The prosecutor alleges the provisions of this subsection.
- 6 3. The court finds that alternative sentencing will serve the best
7 interests of this state and that the person:

8 (a) Has not been convicted of one or more violations of section
9 28-8282 within sixty months of the date of commission of the acts out of
10 which the charges arose. The dates of commission of the offense are the
11 determining factor in applying this paragraph.

12 (b) Was not flying with 0.08 per cent or more by weight of alcohol in
13 the person's blood.

14 (c) Did not cause serious physical injury as defined in section 13-105
15 to another person during the same event or course of conduct that resulted in
16 the conviction for which the person is to be sentenced.

17 Sec. 9. Section 28-8286, Arizona Revised Statutes, is amended to read:
18 28-8286. Alternative sentencing

19 If pursuant to section 28-8284, subsection E a court orders a person
20 convicted of a violation of section 28-8282 to be sentenced pursuant to this
21 section, the court:

22 1. Shall order the person to pay a fine of not less than two hundred
23 fifty dollars.

24 2. May order the person to perform not less than eight or more than
25 twenty-four hours of community service.

26 3. May require the person to attend traffic safety or alcohol abuse
27 classes at the person's expense.

28 4. If in the court's opinion the person has the problem of habitual
29 abuse of alcohol or drugs, shall require the person to obtain treatment under
30 its supervision.

31 5. Shall not suspend any part or all of the imposition or execution of
32 any sentence required by this section.

33 6. Shall order the person to pay an additional assessment of five
34 hundred dollars to be deposited by the state treasurer in the prison
35 construction and operations fund established by section 41-1651. This
36 assessment is not subject to any surcharge. If the conviction occurred in
37 the superior court or a justice court, the court shall transmit the assessed
38 monies to the county treasurer. If the conviction occurred in a municipal
39 court, the court shall transmit the assessed monies to the city treasurer.
40 The city or county treasurer shall transmit the monies received to the state
41 treasurer.

42 7. SHALL ORDER THE PERSON TO PAY AN ADDITIONAL ASSESSMENT OF FIVE
43 HUNDRED DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL
44 FUND. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION
45 OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT
46 THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A

1 MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY
2 TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO
3 THE STATE TREASURER.

4 Sec. 10. Section 28-8287, Arizona Revised Statutes, is amended to
5 read:

6 28-8287. Second offense

7 A. If a person is convicted of a second violation of section 28-8282
8 or is convicted of a violation of section 28-8282 and has previously been
9 convicted of an act in another state that if committed in this state would be
10 a violation of section 28-8282 within a period of sixty months:

11 1. The person is guilty of a class 1 misdemeanor.

12 2. The person shall be sentenced to serve not less than sixty days in
13 jail.

14 3. The court shall order the person to pay a fine of not less than
15 five hundred dollars.

16 4. The court shall not grant probation to or suspend any part or all
17 of the imposition or execution of any sentence required by this subsection,
18 except on the condition that the person serve not less than sixty days in
19 jail and pay a fine of not less than five hundred dollars.

20 5. If in the court's opinion the offender has the problem of habitual
21 abuse of alcohol or drugs, the court shall require the person to obtain
22 treatment under its supervision.

23 6. The person shall pay an additional assessment of one thousand two
24 hundred fifty dollars to be deposited by the state treasurer in the prison
25 construction and operations fund established by section 41-1651. This
26 assessment is not subject to any surcharge. If the conviction occurred in
27 the superior court or a justice court, the court shall transmit the assessed
28 monies to the county treasurer. If the conviction occurred in a municipal
29 court, the court shall transmit the assessed monies to the city
30 treasurer. The city or county treasurer shall transmit the monies received
31 to the state treasurer.

32 7. THE PERSON SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND TWO
33 HUNDRED FIFTY DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE STATE
34 GENERAL FUND. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE
35 CONVICTION OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL
36 TRANSMIT THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE CONVICTION
37 OCCURRED IN A MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES
38 TO THE CITY TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE
39 MONIES RECEIVED TO THE STATE TREASURER.

40 B. The dates of the commission of the offense are the determining
41 factor in applying this section.

42 C. A second violation for which a conviction occurs as provided in
43 this section shall not include a conviction for an offense arising out of the
44 same series of acts.

45 Sec. 11. Section 28-8288, Arizona Revised Statutes, is amended to
46 read:

1 28-8288. Third or subsequent offense

2 A. If a person is convicted of a third or subsequent violation of
3 section 28-8282 or is convicted of a violation of section 28-8282 and has
4 previously been convicted of any combination of convictions of section
5 28-8282 or acts committed in another state that if committed in this state
6 would be a violation of section 28-8282 within a period of sixty months:

7 1. The person is guilty of a class 5 felony.

8 2. The person is not eligible for probation, pardon, suspension of
9 sentence or release on any basis except as specifically authorized by section
10 31-233, subsection A or B until the person has served not less than six
11 months in prison.

12 3. The court shall not suspend the imposition of a prison sentence.

13 4. If in the court's opinion the person has the problem of habitual
14 abuse of alcohol or drugs, the court shall require the person to obtain
15 treatment under its supervision.

16 5. In addition to any other penalty prescribed by law, the person
17 shall pay an additional assessment of one thousand five hundred dollars to be
18 deposited by the state treasurer in the prison construction and operations
19 fund established by section 41-1651. This assessment is not subject to any
20 surcharge. If the conviction occurred in the superior court or a justice
21 court, the court shall transmit the assessed monies to the county
22 treasurer. If the conviction occurred in a municipal court, the court shall
23 transmit the assessed monies to the city treasurer. The city or county
24 treasurer shall transmit the monies received to the state treasurer.

25 6. IN ADDITION TO ANY OTHER PENALTY PRESCRIBED BY LAW, THE PERSON
26 SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND FIVE HUNDRED DOLLARS TO BE
27 DEPOSITED BY THE STATE TREASURER IN THE STATE GENERAL FUND. THIS ASSESSMENT
28 IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN THE SUPERIOR
29 COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE
30 COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT
31 SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY
32 TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER.

33 B. The dates of the commission of the offense are the determining
34 factor in applying this section.

35 C. A third or subsequent violation for which a conviction occurs as
36 provided in this section shall not include a conviction for an offense
37 arising out of the same series of acts.

38 Sec. 12. Appropriation; purpose; exemption; annual budget
39 request

40 A. The sum of \$6,480,000 is appropriated from the state general fund
41 in fiscal year 2005-2006 to the department of public safety to be used for
42 the following department needs:

43 1. Protective body armor.

44 2. Electronic stun devices.

45 3. Other safety equipment.

1 B. The appropriation made pursuant to subsection A of this section is
2 exempt from the provisions of section 35-190, Arizona Revised Statutes,
3 relating to lapsing of appropriations.

4 C. The department of public safety shall include in its annual budget
5 request an amount sufficient to adequately fund the department needs
6 prescribed in subsection A of this section.